



House of Representatives

File No. 760

General Assembly

February Session, 2008

(Reprint of File No. 101)

Substitute House Bill No. 5145
As Amended by House Amendment Schedules
"A" and "B"

Approved by the Legislative Commissioner
May 1, 2008

AN ACT CONCERNING ENVIRONMENTAL JUSTICE COMMUNITIES AND THE STORAGE OF ASBESTOS-CONTAINING MATERIAL.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2009*) (a) As used in this
2 section:

3 (1) "Environmental justice community" means (A) a United States
4 census block group, as determined in accordance with the most recent
5 United States census, for which thirty per cent or more of the
6 population consists of low income persons who are not
7 institutionalized and have an income below two hundred per cent of
8 the federal poverty level, or (B) a distressed municipality, as defined in
9 subsection (b) of section 32-9p of the general statutes;

10 (2) "Affecting facility" means any (A) electric generating facility with
11 a capacity of more than ten megawatts; (B) sludge or solid waste
12 incinerator or combustor; (C) sewage treatment plant with a capacity
13 of more than fifty million gallons per day; (D) intermediate processing
14 center, volume reduction facility or multitown recycling facility with a
15 combined monthly volume in excess of twenty-five tons; (E) new or

16 expanded landfill, including, but not limited to, a landfill that contains
17 ash, construction and demolition debris or solid waste; (F) medical
18 waste incinerator; or (G) major source of air pollution, as defined by
19 the federal Clean Air Act. "Affecting facility" shall not include (i) the
20 portion of an electric generating facility that uses nonemitting and
21 nonpolluting renewable resources such as wind, solar and hydro
22 power or that uses fuel cells, (ii) any facility for which a certificate of
23 environmental compatibility and public need was obtained from the
24 Connecticut Siting Council on or before January 1, 2000, or (iii) a
25 facility of a constituent unit of the state system of higher education that
26 has been the subject of an environmental impact evaluation in
27 accordance with the provisions of sections 22a-1b to 22a-1h, inclusive,
28 of the general statutes and such evaluation has been determined to be
29 satisfactory in accordance with section 22a-1e of the general statutes;

30 (3) "Meaningful public participation" means (A) residents of an
31 environmental justice community have an appropriate opportunity to
32 participate in decisions about a proposed facility or the expansion of
33 an existing facility that may adversely affect such residents'
34 environment or health; (B) the public's participation may influence the
35 regulatory agency's decision; and (C) the applicant for a new or
36 expanded permit, certificate or siting approval seeks out and facilitates
37 the participation of those potentially affected during the regulatory
38 process; and

39 (4) "Community environmental benefit agreement" means a written
40 agreement entered into by a municipality and an owner or developer
41 of real property whereby the owner or developer agrees to develop
42 real property that is to be used for any new or expanded affecting
43 facility and to provide financial resources for the purpose of the
44 mitigation, in whole or in part, of impacts reasonably related to the
45 facility, including, but not limited to, impacts on the environment,
46 traffic, parking and noise.

47 (b) (1) Applicants who, on or after January 1, 2009, seek to obtain
48 any certificate under chapter 277a of the general statutes, new or

49 expanded permit or siting approval from the Department of
50 Environmental Protection or the Connecticut Siting Council involving
51 an affecting facility that is proposed to be located in an environmental
52 justice community or the proposed expansion of an affecting facility
53 located in such a community, shall (A) file a meaningful public
54 participation plan with such department or council and shall obtain
55 the department's or council's approval of such plan prior to filing any
56 application for such permit, certificate or approval; and (B) consult
57 with the chief elected official or officials of the town or towns in which
58 the affecting facility is to be located or expanded to evaluate the need
59 for a community environmental benefit agreement in accordance with
60 subsection (d) of this section.

61 (2) Each such meaningful public participation plan shall contain
62 measures to facilitate meaningful public participation in the regulatory
63 process and a certification that the applicant will undertake the
64 measures contained in the plan. Such plan shall identify a time and
65 place where an informal public meeting will be held that is convenient
66 for the residents of the affected environmental justice community. In
67 addition, any such plan shall identify the methods, if any, by which the
68 applicant will publicize the date, time and nature of the informal
69 public meeting in addition to the publication required by subdivision
70 (3) of this subsection. Such methods may include, but not be limited to,
71 (A) posting a reasonably visible sign on the proposed or existing
72 facility property, printed in English, in accordance with any local
73 regulations and ordinances, (B) posting a reasonably visible sign,
74 printed in all languages spoken by at least twenty per cent of the
75 population that reside within a one-half of a mile radius of the
76 proposed or existing facility, in accordance with local regulations and
77 ordinances, (C) notifying neighborhood and environmental groups, in
78 writing, in a language appropriate for the target audience, and (D)
79 notifying local and state elected officials, in writing.

80 (3) Not less than ten days prior to the informal public meeting and
81 not more than thirty days prior to such meeting, the applicant shall
82 publish the date, time and nature of the informal public meeting with a

83 minimum one-quarter page advertisement in a newspaper having
84 general circulation in the area affected, and any other appropriate local
85 newspaper serving such area, in the Monday issue of a daily
86 publication or any day in a weekly or monthly publication. The
87 applicant shall post a similar notification of the informal public
88 meeting on the applicant's web site, if applicable.

89 (4) At the informal public meeting, the applicant shall make a
90 reasonable and good faith effort to provide clear, accurate and
91 complete information about the proposed facility or the proposed
92 expansion of a facility and the potential environmental and health
93 impacts of such facility or such expansion.

94 (5) The Department of Environmental Protection or the Connecticut
95 Siting Council shall not take any action on the applicant's permit,
96 certificate or approval earlier than sixty days after the informal public
97 meeting.

98 (6) In the event that the Connecticut Siting Council has approved a
99 meaningful public participation plan concerning a new or expanded
100 facility and an informal public meeting has been held in accordance
101 with this subsection, the Department of Environmental Protection may
102 approve such plan and waive the requirement that an additional
103 informal public meeting be held in accordance with this subsection.

104 (c) Any municipality, owner or developer may enter into a
105 community environmental benefit agreement in connection with an
106 affecting facility. Mitigation may include both on-site and off-site
107 improvements, activities and programs, including, but not limited to:
108 Funding for activities such as environmental education, diesel
109 pollution reduction, construction of biking and walking trails, staffing
110 for parks, urban forestry, support for community gardens or any other
111 negotiated benefit to the environment in the environmental justice
112 community. Prior to negotiating the terms of a community
113 environmental benefit agreement, the municipality shall provide a
114 reasonable and public opportunity for residents of the potentially

115 affected environmental justice community to be heard concerning the
116 need for, and terms of, such agreement.

117 Sec. 2. (NEW) (*Effective October 1, 2008*) Notwithstanding any
118 provision of chapter 445 of the general statutes, no person or
119 government agency shall permanently place, deposit, dispose of or
120 store more than one thousand cubic yards of soil consisting of
121 asbestos-containing material (1) from another site to a site that abuts or
122 adjoins residential property, and (2) at a height of more than four feet
123 above the existing grade of the land without the approval of a two-
124 thirds majority of the legislative body of the municipality in which
125 such property is located. For the purpose of this section "asbestos-
126 containing material" shall have the same meaning as in section 19a-332
127 of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2009</i>	New section
Sec. 2	<i>October 1, 2008</i>	New section

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: See below

Municipal Impact: See below

Explanation

The bill requires applicants involved with an “affecting facility” to hold meaningful public participation and to advertise, in a newspaper, an announcement of the date and time of the meeting. These provisions result in a potential minimal cost to the applicants. Some of these costs could be borne by ratepayers, including the state and municipalities.

The bill also allows for municipalities to enter into a community environmental benefit agreement in connection with an affected facility. The municipality is required to provide a reasonable and public opportunity for residents of the potentially affected environmental justice community to be heard. This creates a potential mandated cost for municipalities associated with holding a public meeting.

Lastly, the bill restricts where persons or government agencies may place, store, dispose of, or deposit soil consisting of asbestos-containing material. There is no fiscal impact related to this restriction.

House “A” eliminates the cost to the Department of Public Utility Control (DPUC) of \$102,000 in FY 09 and \$105,000 FY 10 since it eliminates the requirement that DPUC adopt regulations concerning issues outside their area of expertise. It also adds provisions that require applicants involving affected facilities hold meaningful public participation and publish newspaper advertisements, which adds a

potential minimal cost to the applicants. Some of these costs could be borne by ratepayers, including the state and municipalities. House “A” also adds provisions that require municipalities to hold a public meeting if they are entering into community environmental benefit agreements in connection with an “affecting facility”. This creates a potential mandated cost to municipalities.

House “B” restricts where persons or government agencies may place, store, dispose of, or deposit soil consisting of asbestos-containing material. There is no fiscal impact related to this restriction.

The Out Years

State Impact: See above

Municipal Impact: See above

OLR Bill Analysis**sHB 5145 (as amended by House “A, B”)******AN ACT CONCERNING ENVIRONMENTALLY STRESSED AND ENVIRONMENTAL JUSTICE COMMUNITIES.*****SUMMARY:**

This bill requires applicants seeking a new or expanded permit, certificate, or siting approval for certain facilities (an “affecting facility”) in an “environmental justice community” from the Department of Environmental Protection (DEP) or the Connecticut Siting Council to (1) file and receive approval of a meaningful public participation plan, including an informal public meeting, with DEP or the Siting Council, and (2) consult with municipal officials in the municipality or municipalities where the proposed facility will be located to evaluate the need for a community environmental benefit agreement.

Under the bill, DEP and the Siting Council must wait at least 60 days after the informal public meeting to take action on the applicant’s permit, certificate, or approval request. DEP must also enhance the enforcement of existing department regulations and policies or applicable provisions of the general statutes within environmental justice communities. The bill specifies that any municipality, owner, or developer may enter into a community benefit agreement in connection with an affecting facility.

The bill also restricts where persons or government agencies may place, store, dispose of, or deposit asbestos-containing materials.

*House Amendment “A” makes the following changes:

1. modifies what constitutes an environmental justice community by, among other things, extending the definition to include distressed municipalities;
2. limits the types of affecting facilities;
3. defines “meaningful public participation” and “community environmental benefit agreement”;
4. shifts certain requirements from DEP, the Department of Public Utility Control (DPUC), and the Siting Council to the applicants;
5. outlines the procedures for conducting informal public meetings; and
6. changes the bill’s effective date from October 1, 2008 to January 1, 2009.

*House Amendment “B” restricts where persons or government agencies may place, store, dispose of, or deposit asbestos-containing materials.

EFFECTIVE DATE: January 1, 2009

REQUIREMENTS FOR APPLICANTS FOR PERMITS, CERTIFICATES, OR APPROVAL FOR CERTAIN FACILITIES IN ENVIRONMENTAL JUSTICE COMMUNITIES

Affecting Facilities

The bill applies to applicants seeking permits, certificates, or approval from DEP or the Siting Council, starting January 1, 2009, for the following new or expanded facilities:

1. electric generating facilities with capacities of more than 10 megawatts;
2. sludge and solid waste incinerators or combustors;
3. sewage treatment plants with a capacity over 50 million gallons

per day;

4. three types of solid waste facilities (intermediate processing centers, volume reduction facilities, and multi-town recycling facilities) with a combined monthly volume in excess of 25 tons;
5. new or expanded landfills, including those that contain ash, construction, and demolition debris or solid waste;
6. medical waste incinerators; and
7. major sources of pollution under the Clean Air Act (e.g., large factories).

The bill excludes from the definition of affecting facilities (1) portions of electric generating facilities that use non-emitting and non-polluting renewable resources such as wind, solar, and hydropower or that use fuel cells; (2) any facility that received a Siting Council certificate on or before January 1, 2000; and (3) any facility under the control of the state higher education system that has undergone an environmental impact evaluation.

Environmental Justice Communities

The bill applies to affecting facilities in environmental justice communities. An environmental justice community is (1) a United States census block group (part of a census tract) for which 30% or more of the population consists of low-income persons who are not institutionalized and have an income of less than 200% of the federal poverty level, or (2) a distressed municipality. This definition affects 59 municipalities.

Meaningful Public Participation and Informal Public Hearings

The bill requires the applicants to file and receive approval of a meaningful public participation plan from the appropriate agency or council. Under the bill, meaningful public participation occurs when:

1. potentially affected residents have an appropriate opportunity to

participate in decisions over permits, certificates, or approvals when proposed facilities or the expansion of existing facilities may harm their environment or health;

2. public input may influence the agency or council; and
3. the applicant seeks out and facilitates the participation of those potentially affected.

Applicants must certify that they will carry out the meaningful public participation plan. They must also organize an informal public hearing at a time convenient to the residents of the environmental justice community.

Between 10 and 30 days prior to the meeting, applicants must publish a notice stating the date, time, and nature of the informal public meeting in a newspaper having general circulation in the environmental justice community or other appropriate newspaper. The notice must be at least one-quarter page in the Monday issue of a daily publication, or in any day's issued in a weekly or monthly publication. The applicant must also publish this information online, if the applicant has a website.

The bill also requires that the plan specify the type of publicity planned for the informal public hearing. This may include posting reasonably visible signs on the proposed facility in English, posting signs in any languages spoken by at least 20% of the population that resides within one-half mile of the facility, and notifying neighborhood and environmental groups and local and state elected officials in writing.

At the informal public meeting, the applicant must make a reasonable and good faith effort to provide clear, accurate, and complete information about the proposed facility or the proposed facility expansion and its potential environmental and health impacts to the public.

Community Environmental Benefit Agreement

The bill also requires the applicant to consult with elected municipal officials to determine the need for a community environmental benefit agreement. Under the bill, the benefit agreement is a written agreement between the potentially affected municipality and the owner or developer of the property for the proposed affecting facility. In the agreement, the owner or developer agrees to mitigate the impacts of the facility, including those that concern the environment, traffic, parking, and noise.

Under the bill, mitigation for these impacts may include both on-site and off-site improvements, programs, and activities, including funding for environmental education, diesel pollution reduction, construction of biking and walking trails, staffing for parks, urban forestry, support for community gardens, and any other negotiated benefit to the environment of the environmental justice community.

Prior to the agreement negotiations, the municipality must provide a reasonable and public opportunity for affected residents to voice concerns about the agreement and its terms. If the Siting Council approves a meaningful participation plan for a new or expanded affecting facility, and the municipality held a public meeting regarding a community benefit agreement, the DEP may waive the requirement for an additional informal public meeting in its approval of the meaningful participation plan.

HAZARDOUS WASTE

Notwithstanding any hazardous waste laws to the contrary, the bill restricts where persons and government agencies may place, deposit, dispose of, or store more than 1,000 cubic yards of soil that consists of asbestos-containing material. Asbestos-containing material is material composed of any type of asbestos in quantities greater than 1% by weight, either alone or mixed with other fibrous or non-fibrous material (CGS § 19-332).

The bill prohibits, without the approval of two-thirds of the municipal legislative body, the placement of this material from another site to one that abuts or adjoins residential property at a height of more than four feet above the existing grade of the land.

BACKGROUND

Distressed Municipalities

In 2007, the federal department of Housing and Urban Development designated the following municipalities as distressed:

Ansonia	Meriden	Putnam
Bridgeport	Naugatuck	Sprague
Bristol	New Britain	Torrington
Brooklyn	New Haven	Waterbury
Derby	New London	West Haven
East Hartford	North Canaan	Winchester
Enfield	Norwich	Windham
Hartford	Plainfield	
Killingly	Plymouth	

Other Affected Towns

The Environmental Coalition for Justice, with the Capitol Region Council of Governments, performed an analysis that shows that the following municipalities are also affected municipalities under the bill. These municipalities are not distressed, but have census block groups with 30% of its population living below 200% of the federal poverty level:

Ashford	Manchester	Stafford
Bloomfield	Mansfield	Stamford
Danbury	Middletown	Stonington
East Haven	North Haven	Stratford
East Windsor	Norwalk	Thompson
Fairfield	Plainville	Vernon
Greenwich	Salisbury	Wallingford
Griswold	Shelton	Waterford
Groton	Southbury	West Hartford
Hamden	Southington	Westbrook

Wethersfield
Willington

Windsor
Windsor Locks

Related Bill

SB 118 (File 127) requires several state departments to consider the environmental and health effects of certain facilities in environmental justice and environmentally stressed communities. The Energy and Technology Committee reported SB 118 on March 6, 2008, the Environment Committee reported it on April 9, 2008, and the Transportation Committee favorably it on April 16, 2008.

COMMITTEE ACTION

Environment Committee

Joint Favorable

Yea 21 Nay 7 (03/07/2008)

Energy and Technology Committee

Joint Favorable

Yea 12 Nay 7 (04/03/2008)